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The Patent System

OF THE UNITED STATES:

A HISTORY.

BY
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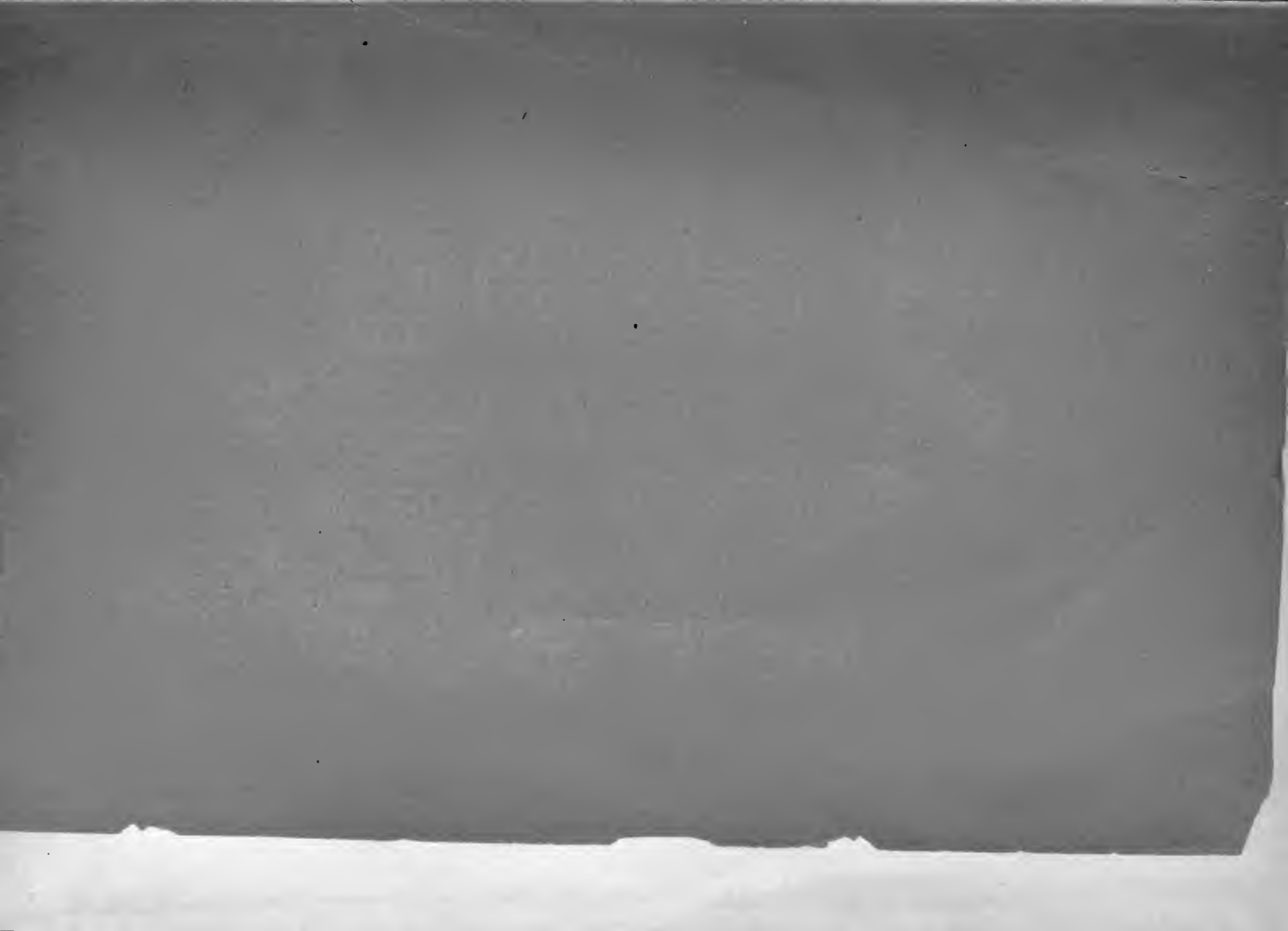

THE PATENT SYSTEM

OF THE UNITED STATES

SO FAR AS IT RELATES TO

THE GRANTING OF PATENTS:

A HISTORY.

By LEVIN H. CAMPBELL,
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"The invention all admired, and each how he
To be the inventor missed; so easy it seemed,
Once found, which yet unfound, most would have thought impossible."
—*Milton.*

ILLUSTRATED.

WASHINGTON, D. C.:
PRESS OF McGILL & WALLACE.
1891.

INTRODUCTORY.

It is the object of this little book to give a history of the United States Patent System so far as it relates to the issuing of patents. Several fragmentary accounts of the United States Patent Office have been written; but so far as can be learned, no extended and connected history of the origin and development of that part of the patent system relating to the granting of patents has ever been written.

The greater portion of the matter contained in chapters II, III, IV, and V has never appeared in popular print, and was only obtained after a long and of necessity frequently interrupted search extending over a year or more and covering both papers and books published by authority of Congress and private publications contemporaneous with the periods embraced in these chapters.

The chapter on the early English system is designed to open the way to a proper understanding of the beginning of the American system, and of many of its principles.

It will be observed that many of the legislative enactments were simply to put into statute law practices which had been introduced by the Patent Office.

United States Patent System.

CHAPTER I.

The Early English Patent System.

The idea and practice of granting letters patent for inventions had their origin in England, and they have since been adopted and copied, more or less closely, by every civilized power. Singular as it may appear, the idea, if not the practice itself, had its foundation in the practice of granting monopolies by the Crown. The prerogative to make these grants was vested in the sovereign, as the sole depositary of the supreme executive power of the State, to be exercised in the behalf and for the benefit of the public. In these grants the persons named therein were allowed the sole buying, making, and selling of certain things in common use specified therein, and the public restrained of this freedom and hindered in their lawful trade. It is impossible to ascertain with certainty when such grants were enlarged to include the sole use of inventions. It is, however, quite clear that the prerogative of the Crown to make such grants is not a statutory one, but was derived from the custom of granting monopolies, and was acknowledged at Common Law. In a case decided in the reign of Ed-

ward III. it is reported, "That arts and sciences which are for the public good are greatly favored in law, and the King, as chief guardian of the common weal, has power and authority by his prerogative to grant many privileges for the sake of the public good, although *prima facie* they appear to be clearly against common right." But the most remarkable and leading case is that of Darcy *v.* Allien, tried in the 44th year of the reign of Elizabeth (1602), for the sole making of playing cards within the realm and for the sole importation of foreign cards. The patent was set aside on the ground that card making was not new, but that it was a known trade. In several subsequent cases, in which the patents were adjudged to be valid, the questions involved were, said the courts, whether the inventions were *newly invented* by the patentee or were used before, in which latter event the courts were of opinion that the patents were void. It appears from these decisions that at common law *novelty* of the subject-matter was necessary to sustain a patent, and in this respect it differed essentially and radically from the grant of a monopoly in trade, which was illegal and void. But notwithstanding the fact that this clear distinction was made by the courts, it was ignored by the Crown, which continued to grant monopolies at its royal pleasure. To put a stop to this abuse of the kingly prerogative, the Statute of Monopolies was passed in the reign of James I., A. D. 1623. It declared void all monopolies granted and which should be granted, and defined the prerogative to be to grant letters patent only for "The sole working or making of any manner of new manu-

factures within the realm to the true and first inventor." The statute was early construed by the courts to include introducers also, of new inventions from abroad. It created no rights which had not existed and been recognized before its passage. The statute simply declared and determined, without any probability of future misapprehension or abuse, what the King's prerogative in the matter was. It contains no clause by which the subject could *demand* a patent as a *right*. The Crown, as the Patron of Arts and Sciences, still caused a patent to be issued as a royal favor on the prayer of its subject. No examination as to the patentability of the invention was made, and the only remedy the patentee and the public had against illegal patents was by suit at law in the name of the sovereign. A few years after the passage of the statute a proclamation was issued abolishing "all patents for new inventions not put in practice from the date of their respective grants." This edict, long since obsolete, is given as being of interest only when taken in connection with a provision of like purport in the grants of patents by the American Colonies and States and in the patent laws to-day of several foreign countries.

The object aimed at in the granting of patents was to secure a reward to the inventor, and at the same time obtain the invention for the free use of the public after the patent had expired. To carry out the latter part of this design, the early patents contained a clause requiring the inventor "To take apprentices and teach them the knowledge and mystery of the said new inventions," a practice which, as Lord Coke suggests, led to the adoption

of fourteen years as the term of a patent, "that others might by seven years apprenticeship and seven years practice acquire the invention." But it was found that the public could not rely on this method for a full and complete understanding and acquisition of the inventions, because the patentee might not perform his part of the agreement. So, in the reign of Queen Anne, the law officers of the Crown introduced another and different clause, requiring a written description of the invention, under the hand and seal of the patentee, to be filed in the Court of Chancery, from whence all patents were issued. This description was termed the Specification.

Prior to this time the only description of record of the invention secured by a patent consisted of a few words giving merely the name of it. The first patent in which a specification was required appears to be that to one John Nasmyth, 1st April, 1712.

It is not certain at what period drawings began to be annexed to the specification. They were not absolutely necessary, but were early and very generally adopted as an easy way of illustrating the device and of aiding the description. In an act of 1719, George II., confirming a patent to one Lombe, is a proviso, "that His Majesty may appoint twelve persons to take a perfect and exact model of said three engines to secure and perpetuate the art of making like engines for the advantage of the Kingdom." The patent system attracted very little notice until near the end of the eighteenth century; from 1680 to 1780 only some eight hundred patents had been granted. But at this time England was just beginning her wonderful

commercial and industrial career, and Arkwright, Hargreaves, Crompton, and Watt had patented their inventions. Their patents became immensely valuable and were the subjects of fierce and prolonged contests in the courts, which ended in a series of adjudications, beginning with Arkwright's case, and in the course of which many of the fundamental principles of patent law and practice were discussed, elucidated, and settled. The cases are to-day looked to for aid and cited as leading authorities on the points decided in them. And all this was before the enactment of a patent law by Congress.

CHAPTER II.

Colonial and State Patents for Inventions.

In October, 1634, the General Court of Massachusetts Bay Colony initiated the practice in America of granting patents by an act securing to one Samuel Winslow an exclusive privilege for a method of manufacturing salt, and prohibiting all other persons from making this article for ten years, except in a manner different from his, *provided* he set up works within one year from the date of the grant. This act is memorable, because it is the FIRST grant of an exclusive privilege in inventions passed in America, and the privilege was the first to be given under and by virtue of the *sovereign will of the people* and not at the royal pleasure of a king. The *proviso* is evidently borrowed from the English proclamation which declared void all patents for inventions not worked in the kingdom within one year after the date of their issue. In 1652 the Colony allowed one John Clark ten shillings for three years from every family which should use his invention for saving wood and warming houses at little cost. In 1655 a patent was granted to Joseph Jencks, sen., for an "engine for the more speedy cutting of grass." From time to time thereafter other grants were made and premiums offered to encourage domestic industries. Connecticut, of all the colonies, though not founded until a quarter of a century after the landing of the first English colonists at Jamestown, appears to have been the most far-sighted and liberal in the number of its grants

for the promotion of the useful arts. Beginning with an act in 1663 for the encouragement of mining, many acts were passed in the course of time covering nearly all of the industries practiced in the colony. In its statutes of 1672 is printed "that there shall be no monopolies granted or allowed but of such new inventions as shall be deemed profitable for the country, and for such time as the general court shall judge meet." In the provincial records of Pennsylvania is found an entry, allowing one Thomas Masters to record and publish in the province two patents which had been granted to him in England for that Kingdom and "the several plantations in America."

No grants of patents appear to have been made by any of the others of the original thirteen Colonies. There was, however, an application made to the Governor of New York in 1693, "for aid to perfect an invention to increase the speed of vessels;" but no record of the disposition made of it is found.

On July 4, 1776, the delegates from the original thirteen Colonies in Congress assembled declared the separation of the Colonies from England, and the assumption by each of them of sovereign powers as "free and independent States." Eight days later "Articles of Confederation" were agreed upon; and under them the Federal Government of the States continued until March 4, 1789. There was no clause in the "Articles" giving to Congress the power to grant patents, and in the meantime the individual States granted patents just as their predecessors, the Colonies, had done.

Maryland granted to James Rumsey "the exclusive privilege and benefit of making and selling new invented boats;" to Oliver Evans the right of making and selling "two machines for the use of merchant mills," and "one other machine denominated a steam carriage." In these grants, were included penalties for infringements to be recovered with costs, *provided* the grantee "shall not be proven not to be the original inventor."

New York granted John Fitch the sole right of making and employing, for a limited time, the steamboat by him lately invented. He and Evans also obtained grants for their inventions in nearly all of the other States.

A detailed enumeration of the grants of patents by the Colonies and States has not been attempted. From those given a correct idea, although it be a general one, may be obtained of how the policy of allowing patent privileges was regarded during this period, and of the facility of obtaining them. They were based on petitions to the Assemblies of the Colonies or States, as the case might be. The petition contained the title and a brief description of the invention, and was accompanied by a model or drawing, and it was referred to a committee appointed for the purpose. The committee conferred with the inventor, examined his invention, and reported favorably or adversely, and a patent was granted for such term of years as the comparative importance of the invention merited.

CHAPTER III.

Of the Power in the Constitution to Grant Patents.

In May, 1787, the Federal Convention began its work of drafting a Constitution for the United States, and by July the Constitution had been practically agreed upon. On July 26 all the proceedings of the Convention up to that time were referred to a Committee of Detail to prepare and report the Constitution. On August 6 the report was delivered; but it contained no power to Congress to grant patents. On August 18, nearly three months after the Convention had been in session, and within a month of its adjournment, Mr. James Madison, of Virginia, arose in his place, and "submitted, in order to be referred to the Committee of Detail, certain powers, as proper to be added to those of the General Legislature." Among these powers were two—one, "to secure to literary authors their copyright for a limited time," and the other, "to encourage, by premiums and provisions, the advancement of useful knowledge and discoveries."

On the same day, Mr. Charles Pinckney, of South Carolina, also submitted a number of propositions, among which were two—one, "to grant patents for useful inventions," and the other, "to secure to authors exclusive rights for a certain time."

The propositions of both these gentlemen were referred to the Committee.

On August 31 such parts of the Constitution as had not been acted upon were referred to a committee composed of one member from each State; and among these undisposed of parts were the propositions to give to Congress the power to grant patents for inventions. Mr. Madison, but not Mr. Pinckney, was of this committee. On September 5 the committee reported and recommended, among other things, that Congress have the power "to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." This was agreed to without a dissenting vote, and in the final revision of the style and arrangement of the articles in the Constitution became paragraph 8, section 8, of article I.

It is seen that the distinction of submitting the proposals to give this power to Congress rests jointly with Mr. Madison and Mr. Charles Pinckney. Both were young men, the former being thirty-six and the latter twenty-nine. They were prominent in the proceedings of the Convention, and were men of marked ability. Neither of them appears, however, to have had any special knowledge or concern in science or the useful arts. They doubtless were prompted to submit their respective proposals because of the precedent set for such a policy by England, the Colonies, and the States. The only novelty involved in the propositions was giving the power to Congress, and this was easily justified, because the members of the Convention knew of the insufficient benefits to the public at large and of the inadequate, capricious,

and conflicting security afforded a patentee by grants from the separate States.

Mr. Madison, in a paper in the "Federalist," wrote of this power as follows: "The utility of this power will scarcely be questioned. The copyright of authors has been solemnly adjudged in Great Britain to be a right at common law. The right to useful inventions seems with equal reason to belong to the inventors. The public good fully coincides in both cases with the claims of individuals. The States cannot separately make effectual provision for either of the cases, and most of them have anticipated the decision of this point by laws passed at the instance of Congress."

The power is limited to granting patents to authors and inventors, and does not include *introducers* who are not the authors and inventors.

Some few years after the adoption of the Constitution the question, Has a State the right, under the Constitution, to grant patents? arose in the trial of a case in New York. The court decided that a State has the right. The case was appealed to the Supreme Court of the United States; but it was there determined on a different point and the question left open. Whatever may be the correct answer, the States have ceased to grant patents.

CHAPTER IV.

The First Patent Legislation.

The first session of the First Congress, under the Constitution, began March 4, 1789, but no legislative business was done until April 1st. Fourteen days later, David Ramsey and John Churchman each filed a petition in the House of Representatives, praying that a law might pass for securing to him an exclusive right for his writings. These petitions were referred to a committee specially appointed for the purpose. This was the *very first* step taken in patent legislation in this country *under* the Constitution. This committee reported favorably, but on motion the House ordered that a committee be appointed to bring in a bill, making a general provision for securing to authors and inventors the exclusive right to their respective discoveries. Accordingly, on June 23d, a bill for such a purpose was reported, but through want of time for its consideration, the measure failed to become a law. These proceedings are given because in them is first found the idea of a general law instead of a special act, passed in each individual case, to secure patent rights.

In this session there were eighteen petitions filed for exclusive privileges as authors or inventors.

The Law of 1790.

The second session began January 4, 1790. A committee was appointed to examine the Journal of the last session, to report therefrom all such business as was then

depending and undetermined. Before this committee made its report, President Washington addressed Congress. In the course of this address he said, "I cannot forbear intimating to you the expediency of giving effectual encouragement as well to the introduction of new and useful inventions from abroad as to the exertions of skill and genius in producing them at home." Three days later the committee reported that "it appears that there was postponed for further consideration until this session 'A bill to promote the progress of science and the useful arts.'" On January 25th a committee was appointed "to prepare and bring in a bill making a general provision for securing to authors and inventors the exclusive right to their respective writings and discoveries; and that Edanus Burke of South Carolina, Benjamin Huntington of Connecticut, and Lambert Cadwallader of New Jersey, do prepare and bring in the same." On February 16th Mr. Burke presented a bill, which, after having been amended both in the House and Senate, was passed, and signed by the President, April 10th. Whether this act, as first reported, or as passed, was the same as the bill reported in the first session will never be known for all the records were burned by the British in 1814.

The Act provided that upon the petition of any person to the Secretary of State, the Secretary of War, and the Attorney-General, setting forth that he had invented any useful art, manufacture, engine, machine, or device, or any improvement therein not before known or used, these three officials, or any two of them, if they deemed

the invention sufficiently useful and important, might cause a patent to be made out in the name of the United States, to bear teste by the President, reciting the allegations of the petition, and describing the invention, and thereupon granting to the petitioner, his heirs, administrators and assigns, for any term not exceeding fourteen years, the sole and exclusive right and liberty of making, constructing, using, and vending to others to be used, the invention; that the patent should be delivered to the Attorney-General to be examined, who, if he should find it conformable to the law, should certify it to be so at the foot thereof, and present the patent so certified to the President, who should cause the seal of the United States to be thereto affixed; that the patent should be recorded in a book to be kept for that purpose in the office of the Secretary of State, and that the delivery of the patent should be entered on the record, and endorsed on the patent by the Secretary at the time of granting it. It further provided that the patentee should, at the time the patent was granted, deliver to the Secretary of State a written description, accompanied with drafts or model of the thing patented, and which description should be so particular, and the models so exact, as not only to distinguish the invention from other things before known or used, but also to enable a person skilled in the art to make and use it, and which description should be filed in the office of the Secretary. And it further enacted that upon the application of any person to the Secretary of State for a copy of such description, and for permission to have a similar model made, it should be the duty of the

Secretary to give such copy, and to permit the person to make a similar model, at the person's own expense.

The description and drawing were not annexed to the patent, and it contained no recital that they formed a part of it. There was no appeal from a refusal to cause a patent to be made out. The practice seems to have been for the petitioner to accompany his petition with a description and model of the invention, and the papers were examined by the three officials, and if found defective in any respect the petitioner was required to amend them. It is a matter of tradition that when a petition was presented, Mr. Jefferson, who was Secretary of State, would send for Mr. Knox, Secretary of War, and Mr. Randolph, Attorney-General, and that the three distinguished officials would inquire with grave deliberation and interest into the utility and importance of the invention. In a letter written by Mr. Jefferson he stated that the "patent board" early established several rules and that among them were: 1st, that a patent would not be granted for a machine in a double use; 2d, nor for a simple change of material; 3d, nor of form. The office fees were paid to the clerk employed in the State Department who made out the patent, and amounted to three dollars and seventy cents, to which were added ten cents for every hundred words for filing the specification. The work of issuing the patent was performed by the Chief Clerk of the Department, and the fees therefrom were a part of his salary. Henry Remsen, Jr., was the first clerk to receive these fees, he having been appointed Chief Clerk on July 25, 1790,

and the first patent having been issued on the 31st of July in the same year. He was succeeded on April 1, 1792, by George Taylor, Jr., and he in turn on February 18, 1798, by Jacob Wagner. Taylor had the fees for a short time only, and Wagner not at all, for the law was repealed in 1793. Under the law of 1790, there was no "Patent Office," and not even a "Division of Patents," in the Department. The first patent issued was to Samuel Hopkins, July 31, 1790, for "Making Pot and Pearl Ashes." It was signed by George Washington, President; Thomas Jefferson, Secretary of State; and Edmund Randolph, Attorney-General. In 1884 the Secretary of the Interior recommended that Congress buy this ancient document; but without effect. It ought to have been purchased because it is of historical interest as being the first in the longest list in the world of patents for inventions. There were three patents issued in 1790, and the whole number issued under the act was fifty-five.

CHAPTER V.

The Law of 1793.

A number of inventors and others interested in the granting of patents were dissatisfied with the act of 1790. At the very next session (there were three sessions) of this Congress, on December 9, 1790, a committee was appointed to bring in a bill to amend the act. Accordingly a bill was reported, but consideration of it was postponed from day to day until the session closed. The opponents of the act were determined however, and at the first session of the next Congress, in 1791, a petition of James Rumsey was read, praying that the act of 1790 "be amended and rendered more effectual for securing to original inventors property in their respective discoveries." At this same session a petition of another inventor was presented, praying that a reasonable time might be granted him "to finish the exhibit of a machine which he is now constructing for cleansing and whitening rice." This petition seems to have contained the first idea of the Caveat in the American system.

In accordance with Rumsey's petition a committee was appointed to bring in a bill, and accordingly did so, but the session expired and left the measure unacted on. The second session of this Congress began November 5, 1792, and Rumsey immediately renewed his petition. A committee was appointed, and they reported a bill. Its first section provided that the petition for a patent should be addressed to the "Director of the Mint." A motion

was made that a clause providing for the appointment of an officer to be denominated the "Director of Patents" be substituted for the words "Director of the Mint." It was lost through the fear of the members that the clause would necessitate another office and salary. It was then moved that the Federal judges of the District Courts be substituted for "Director of the Mint." This motion was sought to be supported on the ground of affording greater facilities to inventors, who would then not have to go or send their applications to Washington city, but could file them with the judge in whose district the applicant might reside or be. Finally it was agreed to substitute "Secretary of State," because, as one member said, the Secretary under the bill had no authority to examine the merits of the inventions, and no harm in this respect could be done. It is an interesting fact that thus early in patent legislation the appointment of a "Director [Commissioner] of Patents" was proposed, and that the act of 1790—distinctively American—was not repealed without a long and persistent effort. The bill became a law February 21, 1793. It was as plainly English in its principles and practice as its predecessor was distinctly American. In the debate on the bill it was said "it was an imitation of the patent system of Great Britain; that the provisions were such as would circumscribe the duties of the deciding officer within very narrow limits."

Mr. Jefferson said of the act, "Instead of refusing a patent in the first instance, as the board was formerly authorized to do, the patent now issues of course, subject

to be declared void on such principles as should be established by the courts of law. This business, however, is little analogous to their course of reading; and a previous refusal of a patent would better guard our citizens against harassment by law suits. But England had given it to her judges, and the usual predominancy of her example carried it to ours." The act provided that when any person, being a citizen of the United States, should allege that he has "invented any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement" thereof, not known or used before the application, and should present a petition to the Secretary of State, praying that a patent may be granted therefor, it should be lawful for the Secretary to cause a patent to be made out in the name of the United States, bearing teste by the President, reciting the allegations of the petition, and giving a short history of the invention, and thereupon granting to the petitioner, his heirs, administrators, or assigns, for a term not exceeding fourteen years, the exclusive right of making, constructing, using, and vending to others to be used, the invention, which patent should be delivered to the Attorney-General to be examined; who, if he finds the patent conformable to the law, should certify accordingly, at the foot thereof, and return the same to the Secretary, who should present the patent to the President to sign, and should cause the seal of the United States to be affixed thereto, and that the patent should be recorded in a book in the office of the Secretary. It further provided that the patentee of an improvement should not be at liberty to make, use, or vend the original invention, nor

should the first inventor be at liberty to use the improvement; and that simply changing the form or the proportion of a machine, or composition of matter, in any degree, should not be deemed an invention. It further enacted that every inventor, before he could receive a patent, should swear that he does verily believe that he is the true inventor of the art or thing for which he solicits a patent, and should deliver a description of his invention, and of the manner of using or process of compounding the same, in such full, clear, and exact terms, as to distinguish the same from all other things before known, and to enable any person skilled in the art of which it is a branch, or with which it is most nearly connected, to make, compound, and use the invention. And in the case of a machine, he should fully explain the principle, and the several modes in which he has contemplated the application of the principle; and he should accompany the whole with drawings and written references, where the nature of the case admits of drawings, or specimens of ingredients and of the composition; which description, signed by himself and attested by two witnesses, should be filed in the office of the Secretary of State; and that the inventor should deliver a model of his invention, should the Secretary deem a model necessary. It also provided that it should be lawful for an inventor, his executor or administrator, to assign the title and interest in the invention, at any time, and the assignee, having recorded the assignment in the office of the Secretary of State, should thereafter stand in the place of the inventor, and so the assignees of the assigns, to any degree. It also made pro-

vision for the disposal of interfering applications, by enacting that they should be submitted to three arbitrators, one chosen by each person and one by the Secretary of State, and that their award should be final, as far as respects the granting of the patent; and if either of the applicants should refuse or fail to choose an arbitrator, the patent should issue to the opposite party. And where there should be more than two interfering applications, and the parties thereto should not all unite in selecting three arbitrators, the Secretary of State should appoint the arbitrators. It further enacted that every inventor, before presenting his petition, should pay into the treasury of the United States thirty dollars, for which he should take duplicate receipts; one of which receipts he should deliver to the Secretary of State when presenting the petition, and the money should be in full for all the services performed in issuing the patent, and should pass to the account of clerk-hire in the office of the Secretary; *provided*, nevertheless, that for every copy of any paper respecting any patent the person obtaining the copy should pay, at the rate of twenty cents for every copy-sheet of one hundred words, and for every copy of a drawing two dollars, of which payments an account should be rendered annually to the Treasurer, and they should also pass to the account of clerk-hire in the office of the Secretary of State. Though this act, like that of 1790, required a petition to be presented, and the patent to recite the "allegations of the petition," it seems that the petition alone seldom contained anything beyond the mere title of the invention, indicating its object and

nature. But the description being filed at the same time and often on the same paper, seems to have been regarded as a part of the petition; and to comply with the law, by inserting in the patent the "allegations in the petition," and a "short description of the invention," and avoid mistakes as to the extent of the inventor's claim, the officers annexed to the patent the whole description of the invention, usually in the applicant's own writing, and by express reference in the patent referred to it as forming a part of the patent. Every application for a patent consisted of the petition, the description, the oath, and the drawing. The petition was addressed to the Secretary of State, and gave the name, citizenship, and residence of the petitioner and title of the invention, and was signed by the petitioner. The specification contained a description of the invention, and in some instances a claim of what the inventor regarded as his own invention. As early as 1807, a few patentees closed the descriptions by a summary of the alleged benefits and advantages of their inventions, and from 1812 it became not infrequent to close the description by a separate paragraph pointing out the part or parts which the applicant believed to be his invention. In a circular of information respecting the manner of taking out patents, etc., distributed by the Patent Office in 1828, applicants are advised to distinctly set forth what they claim as new, and that this would be best done in a separate paragraph at the end of the description, and in a form suggested in the circular. The oath recited that the applicant verily believed himself to be the first and original inventor, and that he was a citizen of the United States.

By an act approved April 17, 1800, the right to apply for a patent for an invention of a deceased inventor was extended to his legal representative; and by the same act, aliens, who at the time of application had resided two years in the United States, were permitted to apply, provided they should make oath before the patent issued that their invention had not, to the best of their knowledge or belief, been known or used either in this or any foreign country, and by the act of July 13, 1832, the right as to aliens was further enlarged to include resident aliens who had declared their intention to become citizens. In these cases the oath was changed in so far as to conform to the facts necessary to be recited in each particular case.

The drawing was usually described in the specification, and references made thereto throughout the description. Whenever this was done, two copies of the drawings had to be furnished, one of which was attached to the patent and the other retained in the Patent Office. If there was only one copy of a drawing furnished, it was retained in the office and the patent issued without any drawing annexed to it. Those applicants who desired to have their patents issued without delay furnished two complete sets of application papers; one copy of the specification being on heavy paper or parchment, suitable to be attached to the patent. No provision for a caveat was made in the law, but it was the practice of the office to preserve in confidence such descriptions of inventions as were forwarded for the purpose, and to inform the inventor should a similar application be filed. He then could present his petition and be put into interference with the conflicting applicant.

By a resolution of Congress in 1805 the Secretary of State was required to report to it in January, annually, a list of all patents granted the preceding year, and the names and residences of the patentees.

In July, 1800, the Department of State removed from Philadelphia to Washington. The records, etc., of the Department were landed on Lears Wharf, at the foot of G street. There was no building immediately ready to receive them, but in August the Department found a home in what were locally known as the "Seven Buildings," at Pennsylvania avenue and Twenty-first street. These buildings are still standing.

In May, 1802, President Jefferson appointed William Thornton as a clerk, at $1,400 per year, to have charge of the issuing of patents. He was of English parentage and was born in the Island of Tortola. He was graduated in medicine in Edinburgh; traveled extensively in Europe, and, just after his coming of age, came to reside in Philadelphia. Here he made the acquaintance of Washington, who, under the act to establish the seat of the Government, appointed him to the Board of Commissioners in the City of Washington. This board finished its work and was abolished May 1, 1802. Thornton was well educated, and his abilities were of the first order. It was at his suggestion that the first agricultural fair in this country was held, in Washington, in 1804. There is told of him the following anecdote illustrative of his bravery and decision of character: At the capture of Washington City in 1814 by the British, an officer had ordered a squad of soldiers to train a cannon on the

building in which was the Patent Office. At that moment Thornton rode up, rapidly dismounted, and threw himself before the gun. With flashing eyes, he demanded, "Are you Englishmen, or only Goths and Vandals? This is the Patent Office, the depository of the inventive genius of America, in which the whole civilized world is concerned. Would you destroy it? If so, fire away and let the charge pass through my body." The officer bowed his head with shame and ordered the soldiers away. In 1821 Thornton assumed the title of "Superintendent," and he is so registered in the Government Blue Book, but it was not until 1830 that the law recognized the title by specifically mentioning the office in making an appropriation to pay salaries in the Department of State.

In a report made by a committee in 1823, appointed by the House of Representatives to examine the state and condition of the Office, Congress was recommended to provide for "an artist" to repair and have charge of the models. A few years later provision was made in an appropriation act for a machinist.

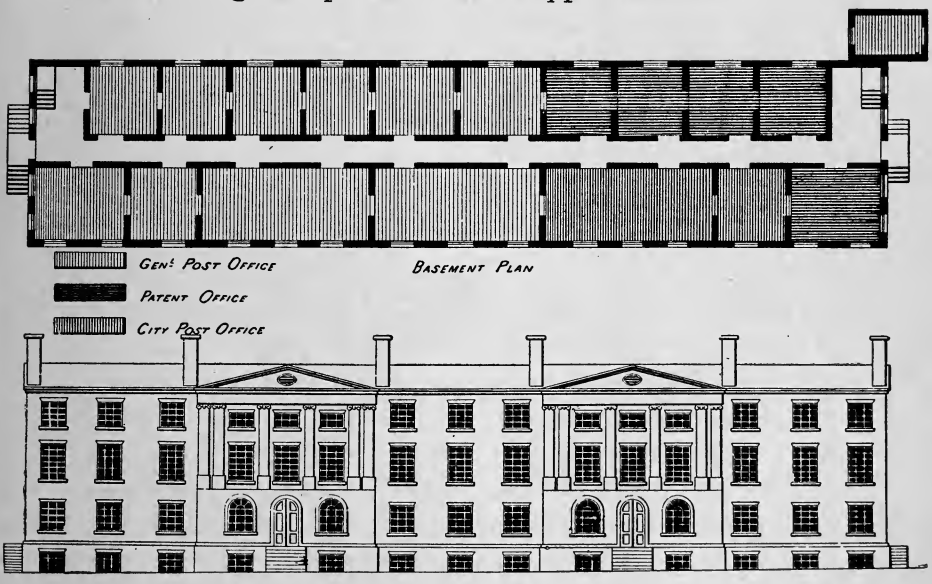
In 1810 Congress authorized "the purchase of a building for the accommodation of the general post-office, and of the office of the keeper of the patents." The building purchased was known as Blodgett's Hotel, and stood on the site now occupied by the south front of the General Post-Office Department. Into the east end of this building Thornton moved the records, models, etc., of the office.

During many years of his superintendency he freely exercised much discretionary power in the issuing of patents, and ordinarily when a mistake occurred in issuing a

patent, whether by the patentee or the office, he would, on request, within a reasonable time after its issue, make out a new patent without a new fee for the same invention for the unexpired term of the original patent. The legality of his acts in this matter was confirmed from time to time in several opinions of the Attorney-General, but not tested in the courts until the case of Grant *v.* Raymond (Supreme Court U. S., 1832), in which case it was upheld. In a communication to the Secretary of State, under date of January 6, 1818, Thornton defined the equities and limitations of a reissue as concisely and luminously as has ever been done by any court or text writer. About 1823–4, the Attorney-General was of opinion that a new patent made out on account of a faulty specification, except for clerical errors on the part of the office, must be charged a new fee. Out of this practice of Thornton's grew the act of July 3, 1832, providing for the reissue of a defective patent.

This act also required the Secretary of State to report to Congress in January, annually, and to publish in two of the newspapers printed in Washington City a list of all patents which shall have expired within the year immediately preceding, with the names of the patentees. It further enacted that application to Congress to prolong or renew the term of a patent should be made before its expiration, and should be published at least once a month for three months before its presentation, in two newspapers in Washington City, and in one of the newspapers in which the laws of the United States should be published in the State in which the patentee should reside; that the peti-

tion should set forth particularly the grounds of the application and be verified by oath, and should be accompanied by a statement of the ascertained value of the invention and of the receipts and expenditures of the patentee, so as to exhibit the profit or loss arising therefrom. Prior to this statute the only mode of prolonging the term of a patent beyond the original grant was by means of private acts of Congress upon individual applications.



U S Post Off.e Patent Office Building Prior to the Fire of 1836.

On the death of Thornton, in 1828, Thomas P. Jones succeeded to the superintendency, and John D. Craig, shortly after, followed him. Craig was the first to make an orderly and systematic classification and arrange-

ment of the models and drawings, corresponding to the nature of the subject to which they belonged. The model room was on the second floor and contained fourteen classifications of models. He was succeeded in 1834 by B. F. Pickett, who remained only a short while. In 1835 Henry L. Ellsworth, of Connecticut, became Superintendent. The organization of the office then consisted of the Superintendent, at $1,500 a year; two clerks, at $1,000 each, and one at $800; a machinist at $700; and a messenger at $400.

In 1793 ten patents were issued; and the receipts of the Office were $660, and in 1800, the year it was removed to Washington, $1,230. The number of patents issued in 1801, the first whole year the office was in Washington, was forty-four. From 1793 to 1802 the money received by the Office was covered into the Treasury as clerk-hire for the Department of State; consequently it does not appear that any payment for salaries of Superintendent, clerk, and messenger were made out of the Office receipts during these years; but in 1803 the revenues were kept separately in the Treasury, and the receipts were $2,910, and the expenditures on account of salaries paid by the Office were $1,750. The records of the payments on account of contingent expenses from 1793 to 1813 were burned by the British in 1814. In that year the receipts were $6,090; salaries, $2,150; and contingent expenses, $403.01. In 1835 the number of patents issued was seven hundred and eighty-four, and the salaries paid $5,400. The whole number of patents granted from February 21, 1793, to July 8, 1836, was 9,957.

The Law of 1836.

On December 31, 1835, Hon. John Ruggles, Senator from Maine, moved that the Senate appoint a committee to take into consideration the condition of the Patent Office and the laws relating to the issuing of patents. The committee was appointed, and on April 28, 1836, made a report, and at the same time submitted a bill for the reorganization of the Office. The report substantially said, among other things, that the Department of State had been going on under the law of 1793, issuing patents on every application without any examination into the merits of the invention, and that the evils necessarily resulting from such a practice must daily increase till Congress put a stop to them. Some of the specified evils were as follows: 1. A large number of the patents granted are worthless and void, as conflicting with and infringing one another, or based upon matters not subject to patent privileges; this state of things arising either from a want of due attention to the specification of claim or from ignorance on the part of the patentees as to the state of the arts in this and foreign countries. 2. The country is flooded with patent monopolies, embarrassing to *bona fide* patentees, whose rights are thus invaded on all sides; and not less embarrassing to the community generally, in the use of even the commonest and oldest improvements in the arts and manufactures. 3. Out of this interference of patents a great number of lawsuits arise, onerous to the courts, ruinous to the parties, and injurious to society. 4. The law opens the door to frauds, which

have already become extensive and serious. It is represented that it is not uncommon for persons to copy patented machines in the model room; and, having made some immaterial alterations, to apply in the next room for patents. There being no power to refuse them, patents are of course issued. Thus prepared, these patentees go forth on a retailing expedition, selling out their patent rights for States, counties, and townships, to those who find, when it is too late, that they have purchased what the vendors had no right to sell or use. This speculation in patent rights has become a regular business. Further, the first inventor sees his invention pirated from him, or else he must, to protect his rights, become involved in numerous and expensive lawsuits in distant and various sections of the country.

After thus forcibly pointing out the evils of the existing law, the report stated that to prevent these evils in the future was the first and desirable object of an alteration of the law, and that the obvious, if not the only, means of effecting it was the issuing of patents for new inventions only. With this report before them, Congress took up and passed the bill which accompanied it, and the bill became a law, July 4, 1836. This law required an examination to be made of the merits of the invention, and in this respect was a distinct return to the American system inaugurated by the act of 1790. Its wisdom has never been successfully questioned, and it has found its justification in the industrial progress of the greatest nation in the world. The law established the Patent Office as a bureau under the Department of

State, and put it in charge of a chief officer to be called the Commissioner of Patents, at a salary of $3,000 per annum, his duty being, under the direction of the Secretary of State, to superintend the issuing of patents. The law further provided for a chief clerk, "an examining clerk," at $1,500; two other clerks, one of them to be a competent draughtsman; one other clerk; a machinist, and a messenger. It provided, also, a seal for the office, and required that the patent should issue under that seal, and be signed by the Secretary of State, and countersigned by the Commissioner; that every patent should contain a title of the invention, correctly indicating its nature and design, referring to the specification for the particulars thereof, a copy of the specification to be annexed to the patent.

Section six of the act provided, substantially, that any person having invented any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement thereon, not known or used by others before his invention thereof, and not at the time of his application for a patent in public use or on sale with his consent, and desiring to obtain an exclusive property therein, might make written application to the Commissioner, expressing such a desire, and the Commissioner might then grant the patent; but that before the inventor should receive the patent he should deliver a written description of his invention, and "particularly point out and specify the part, improvement, or combination which he claims as his own invention." The applicant was also required to make oath that "he does verily believe he is

the original and first inventor of the invention for which he solicits a patent; that he does not know or believe that the same was ever before known or used," and of what country he was a citizen.

Under this act, also, the specification and drawing had to be signed by the inventor and attested by two witnesses, and a model was required. The fees were fixed at $30 for citizens and aliens resident in the United States for one year next preceding the application, $500 for British subjects, and $300 for all other persons; further, all the moneys received were to constitute a fund for the payment of salaries and expenses of the Office, to be called the Patent Fund. On the filing of an application, the Commissioner was to cause an examination to be made of the alleged new invention, and if it appeared therefrom that the applicant was the first and original inventor, and the Commissioner deemed his invention sufficiently useful and important, it was his duty to issue a patent therefor. And if, on the other hand, it appeared that the applicant was not the first and original inventor, the Commissioner was required to notify him of the fact, giving him such information and references as might be useful in judging of the propriety of renewing his application or of altering his specification. In every such case, if the applicant elected to withdraw his application and relinquished his claim to the model, he was to receive back $20 of the original fee; but if he persisted in his application, with or without altering his specification, he was required to make the oath anew, in the manner required on first filing his application. It

was the practice of the Office up to 1863 to return the papers to the applicant for amendment; but in that year this practice was stopped and the applicant in order to amend intelligently had either to retain copies of the papers or have the Office make them. From the refusal of the Commissioner to issue a patent the applicant could appeal to a board of three examiners appointed for that purpose by the Secretary of State on each occasion when appeal was taken; and the Commissioner was governed by their decision in the further action in the case. He was also required to decide interferences, and an appeal was allowed from his decision therein to a similarly appointed board. The law further made provision for the filing of a caveat and for notice to the caveator of an interfering application filed within one year after the caveat. It re-enacted the law as to reissues, and allowed the original patentee to have the specification of any improvement of the original invention invented by him subsequent to the date of his patent annexed to the original specification. The act provided, also, that whenever an application was refused on an adverse decision of a board of examiners, on the ground that the patent applied for would interfere with an unexpired patent previously granted, the applicant might have remedy by bill in equity in any court having cognizance thereof, and that its adjudication, if favorable, should authorize the Commisstoner to issue such patent; if unfavorable, appeal lay to the Supreme Court of the United States, provided the amount involved brought the case within the provision of the Judiciary Act of 1789. By a subse-

quent act, approved February 18, 1861, the appeal might lie without regard to the amount in controversy. Application for the extension of the term of a patent had to be made to the Commissioner; and the Secretary of State, the Solicitor of the Treasury, and the Commissioner were constituted a board to hear and decide the application, and if their decision was favorable the Commissioner renewed the patent for a term of seven years from and after the expiration of the first term.

The law further enacted that there should be provided a scientific library for the Office, and appropriated $1,500 for the purpose, to be paid out of the patent fund. There was a library of some three hundred volumes in the Office prior to this provision, and the $1,500 was designed to be used in the purchase of new books for the existing library; but before any of the money was used the library was burned in the fire of December 15, 1836. The law also enacted that the models and specimens of compositions and of fabrics and other manufactures and works of art, patented and unpatented, which had been or should thereafter be deposited in the Office, should be classified and arranged in such rooms or galleries as might be provided for the purpose.

The first patent issued under this law was to Hon. John Ruggles "For locomotive engines on inclined planes," July 13, 1836.

Henry L. Ellsworth was appointed as the first Commissioner, and Charles M. Keller examining clerk, and thereupon the present system of examination began. Mr. Keller's father was the first machinist the Office ever had, and

at his death, in 1831, the son became his successor. Mr. Keller's judgment and experience in the Office contributed largely to the formulation of the law. Indeed, it has been stated that he originated the idea of an amendment of the act of 1793, and on the lines of the law of 1836.

On June 15, 1836, Mr. Ruggles, as one of a committee appointed on his motion for the purpose, reported a bill "providing for the construction of a building for the accommodation of the Patent Office." On June 28, the bill then being on its last reading, a motion was made to recommit with instructions to report a bill providing for the purchase of the "old brick Capitol," fronting Capitol Square. The motion was lost, and the bill as read passed the Senate, appropriating $108,000, out of the "patent fund" for the erection of a suitable building of brick and wood. A House amendment changed these materials to cut-stone facing for the exterior walls, and also provided for fireproofing the structure within. The bill as amended became a law July 4, 1836. Late in that month the erection of the building began. It was the present south front of the Patent Office, excluding the south ends of the east and west wings. The building was 270 feet long and 69 feet wide. The basement (what is now the first or ground floor), was to be used for storage, fuel, furnaces, etc., the first or portico floor for office rooms, and the second floor was to be one large hall, with galleries on either side, and to have a vaulted roof. This hall was designed to be used as a national gallery of the industrial arts and manufactures, and for the exhibition of models of patented and unpatented inventions. The

body of the building is of Virginia sandstone and was afterward painted white.

On December 15, 1836, a fire destroyed the building in which the Patent Office was, and all the models and records and the library, with the exception of one book, volume VI of the Repertory of Arts and Manufactures (now in the Scientific Library of the Office), which an employé of the office happened to have taken to his home before the fire. Among the records destroyed was a folio containing drawings of Fulton's first steamboat, made by his own hands.

On December 9th, Mr. Ruggles asked that a committee be appointed "to report the extent of the loss sustained by the burning of the Patent Office." This committee made a report, and also at the same time submitted a bill which became the act of March 3, 1837, and in which every provision was made to restore the specifications, drawings, and models, by obtaining duplicates of them from the persons in whose possession the originals were. An appropriation of $100,000 was made for this purpose. The whole number of models destroyed was about seven thousand, and the records covered about ten thousand inventions. It was not until 1849 that the work of restoration was discontinued, and out of the amount allowed for the purpose $88,237.32 was expended. The act further provided that whenever a patent should be returned for correction and reissue under the act of 1836, and the patentee desired it, several patents might be issued for distinct and separate parts of the thing patented, on the payment of $30 for each additional patent

so to be issued. It also enacted that any patent thereafter to be issued might be granted to the assignee of the inventor, the assignment thereof being first entered of record, and the application therefor being made and the specification sworn to by the inventor. Prior to the passage of this act a patent could issue to the inventor only; but after it had issued it was assignable so as to give the assignee legal rights. It required that in all cases thereafter filed, duplicate drawings should be furnished, one to be deposited in the Office and the other annexed to the patent and considered a part of the specification. It was the practice of the Patent Office under the act to accept a single drawing as sufficient for the purpose of an examination of the application, but an additional one was required before the patent issued, in order that one might accompany it, while the other remained in the Office. In this law provision was first made for disclaiming the parts of a thing or process of which the patentee was not the first inventor. It also further enacted that when application should be made for any addition to a patent, or whenever a patent should be returned for correction and reissue, the claim in every such application or patent should be re-examined. The Commissioner was also required by the law of 1837 to report to Congress in January, annually, the expenditures of the Office, together with a list of the names of patentees, etc. The law of 1836 contained no such requirement, probably through inadvertence.

On March 3, 1839, an additional act was passed abolishing the board of examiners provided for by the act of

1836, and enacting instead that the appeal might be taken from the Commissioner to the Chief Justice of the District Court of the United States for the District of Columbia, and provision was made for filing a bill in equity by an applicant in any court having cognizance thereof, in all cases not only where patents were refused by the Commissioner, but where refused by the Chief Justice of the District of Columbia. After the abolition of the "board" each examiner decided the interfering applications that arose in his division and reported his decision to the Commissioner. On July 1, 1860, Commissioner Thomas changed this practice by deputing one examiner to determine all interferences. The act further provided for an appropriation of one thousand dollars out of the patent fund to be expended by the Commissioner in the collection of agricultural statistics, distribution of seeds, etc., and from this date until the establishment of the Agricultural Bureau the Commissioner of Patents had charge of this work, which was done in the Patent Office.

During the erection of the Patent Office building the Commissioner found temporary quarters in the City Hall. In the spring of 1840 the building was completed and the Office moved into its own home, upon the building of which the sum of $422,011.65 was expended. The Commissioner in his annual report for 1840 said: "The patented models are classified and exhibited in suitable glass cases. The National Gallery is ready for the exhibition of models and specimens. I am happy to say that the mechanics and manufacturers are improving the op-

portunity to present the choicest contributions, and from the encouragement given, no doubt is entertained that the hall, considered by some so spacious, will, in a short time, be entirely filled, presenting a display of national skill and ingenuity not surpassed by any exhibition in the world."

The number of applications during that year was 765; number of patents 475, and of caveats 228. The receipts were $38,056.51, and expenditures, on account of salaries, $16,486.37, and contingent expenses, including agricultural statistics and seeds, $23,982.45. The balance in the Treasury to the credit of the "patent fund" was $75,000.

On August 29, 1842, an additional act was passed, providing for the issuing of a patent for "any new and original design," for the term of seven years, and for the taking of the oath to the specification in foreign countries.

An act of May 27, 1848, abolished the board for the extension of patents, composed of the Secretary of State, the Commissioner of Patents, and the Solicitor of the Treasury, and vested their powers in the Commissioner alone. When an application for the extension of a patent was made, the Commissioner was required to refer the case to the principal examiner having charge of the class of inventions to which the case belonged, for a report, and upon his report the Commissioner granted or refused the extension.

By the act of March 3, 1849, establishing the Interior Department, the Patent Office was attached thereto. This same act appropriated $50,000 out of the patent fund to begin the east or Seventh street wing. It was completed

in 1852, and cost $600,000, $250,000 of which was taken from the revenues of the Office. As soon as the wing was ready for occupancy, the Interior Department took possession.

By an act approved August 31, 1852, a librarian, at $1200, was provided for the Office. This act also appropriated $150,000 to begin the erection of the west or Ninth street wing. Plans for the entire building as it now stands were prepared in this year. The west wing was completed and occupied in 1856, and cost $750,000. In the same year work was begun upon the north or G street wing.

Previous to December, 1857, the Commissioner heard appeals in person from the adverse decisions of the examiners; but this practice becoming a physical impossibility, owing to the increase in the business of the Office, Commissioner Holt at first deputed temporary boards of examiners to decide appeals, and at length created a permanent board of three examiners, whose duty it was to decide on appeal all rejected cases and submit their decisions to him for his approval. By an act passed March 2, 1861, a board of three examiners-in-chief was established, whose duties were, principally, to decide appeals from the adverse decisions of the examiners. No appeal fee was charged, but under an act passed in June, 1866, a fee of ten dollars was necessary. An appeal from this board was allowed to the Commissioner in person on payment of twenty dollars. An appeal could not be taken from an examiner, except in interference cases, until after the application had been twice rejected, and the second

examination was not to be given until the applicant renewed the oath. The act of March 2, 1861, also provided that no money paid as a fee on any application for a patent, after the passage of the act, should be withdrawn or refunded; nor should the fee paid on the filing of a caveat be considered as a part of the fee on filing a subsequent application for the same invention. The right to annex to a patent the specification of additional improvements was also repealed by this act. The right to withdraw the fee was given to American applicants by the act of 1836, and was extended to foreigners by the act of 1837. The right of having a caveat fee applied as part of the sum to be paid upon a subsequent application was given by the act of 1836. By act of 1861, also, all the Office fees were revised and the present rates established. The term of seven years for design patents was changed, by providing that after the date of the act a patent for a design might be granted for the term of three and a half years, or seven years, or fourteen years, as the applicant might elect, and fixing the fees at ten, fifteen, and thirty dollars, respectively. It was also enacted that applications must be prepared for examination within two years after the filing of the petition, and in default thereof they were to be regarded as abandoned, unless it were shown to the satisfaction of the Commissioner that such delay was unavoidable. Previous to this an applicant might suit his own pleasure and interest as to the time when he would complete his application for examination. By the same act the term of all patents was fixed at seventeen years, all extensions of patents were prohibited, and the Commis-

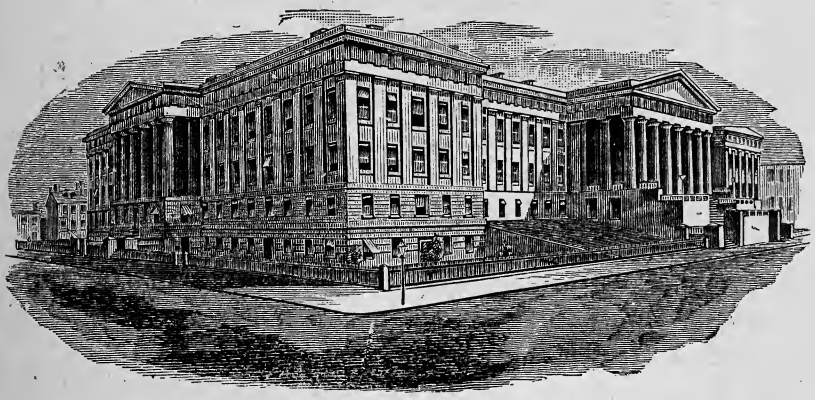
sioner was authorized to print ten copies of the specification and drawing of all patents thereafter issued. Prior to this the copies were made by tracing or drawing.

By section three of an act, March 3, 1863, it was enacted, "That every patent shall be dated of a day not later than six months after the time at which it was passed and allowed and notice thereof sent to the applicant. And if the final fee be not paid within the six months, the patent shall be withheld and the invention become public property as against the applicant." In this act, also, the requirement as to a renewal of the oath, when on a first rejection the applicant shall persist in his claim, under the act of 1836, was repealed.

By an act of March, 1865, it was provided that any person having an interest in an invention for which a patent was ordered to issue upon payment of the final fee, as provided in section three of the act of 1863, but who had failed to make payment as provided in that act, should have the right to make an application for a patent for his invention the same as in the case of an original application, provided such application be made within two years after the date of the allowance of the original application.

In 1867 the north or G street wing of the present Patent Office building was finished at a cost of $575,000. The entire building cost $2,347,011.65. It speaks for itself! It is one of the handsomest, most massive public structures in the world, and would be a credit to any age or people. Were it wholly given over to the use of the Patent Office, for which it was originally solely intended,

and to which it, by right, ought to be given, the inventors of the whole world might well point with pride to the complete justice of the American people.



NEW PATENT OFFICE BUILDING.

The appropriations act of July 20, 1868, abolished the "patent fund," and provided that all moneys received by the Office should be paid into the Treasury. Thereafter appropriations were made for the Office in the same way as for other Bureaus. From 1793 to the date of this act the moneys earned by the Office were kept in the Treasury as a separate fund, known as the "patent fund," and the Commissioner drew against it for the expenses of the Office. There was on January 1, 1868, a balance in the Treasury to the credit of the patent fund of $271,444.48, and all of this was swept into the general coffers of the Government, by the act of July 20, 1868.

On May 1, 1869, Samuel S. Fisher, of Ohio, became Commissioner. He was the first to publish his decisions

and to have the copies of the specifications and drawings made by photo-lithography. He also instituted the practice of requiring a competitive examination for entrance to and promotions in the examining force of the Office.

In this year, by conventions between the United States and France and Russia, provision was made for the deposit in the Patent Office of trade-marks by citizens of any of these countries; but no fee was provided for the filing of the papers.

In 1843, and annually thereafter, a report was published, containing an alphabetical index of names of inventors, a list of expired patents, and the claims of the patents granted during the year, and in 1853 and afterward small engraved copies of a portion of the drawings were added to the reports to explain the claims. In 1843 the report was a small pamphlet, but by 1867 it had swelled to four large volumes. They were known as the Patent Office Reports.

In 1870 there were 19,171 applications filed, and 13,333 patents issued. The Office receipts were $669,456.76, and expenditures on account of salaries $404,143.53; and contingent expenses $153,003.59. The balance in the Treasury, *showing the profits of* the Office, was $643,355.21. From July 8, 1836, to January 1, 1870, 98,460 patents were issued, and the examining force increased from one examiner to three examiners-in-chief, twenty-two principal examiners, twenty first assistant examiners, and the same number of second assistants.

List of Commissioners Under the Act of 1836.

Henry L. Ellsworth, July 4, 1836.
Edmund Burke, May 4, 1845.
Thomas Ewbank, May 9, 1849.
Silas H. Hodges, November 8, 1852.
Charles Mason, May 16, 1853.
Joseph Holt, September 10, 1857.
William D. Bishop, May 27, 1859.
Philip F. Thomas, February 16, 1860.
D. P. Holloway, March 28, 1861.
J. C. Theaker, August 17, 1865.
Elisha Foote, July 29, 1868.
Samuel S. Fisher, April 26, 1869.

CHAPTER VI

The Law of 1870.

On July 8, 1870, an act was passed, revising, consolidating, and amending the statutes relating to patents and repealing the twenty-five acts and parts of acts, including such portions of the appropriations bills as were applicable to the Patent Office, that had been enacted since the passage of the law of 1836.

The law of 1870 added to the force of the Office an Assistant Commissioner; and an examiner of interferences, whose office was to determine the question of priority of invention in interference cases. It gave the Commissioner authority, subject to the approval of the Secretary of the Interior, to establish regulations for the conduct of proceedings in the Office. As early as 1828 the Office began to print for free distribution circulars containing information as to what the law relating to the issuing of patents was, and how to proceed to obtain a patent. These circulars were revised and enlarged from time to time, as various changes and additions were made in the law affecting the practice before the Office. The information contained in them was divided into numbered sections and conveniently arranged under suitable headings. At length these circulars took the form of a pamphlet, which began to be called the Rules of Practice, but prior to the act of 1870 the rules did not have the force of law. The statute also authorized the Commissioner to print copies of the claims of the current

issues of patents, and of such laws, decisions, and rules as were necessary for the information of the public. Under this provision the Office began to publish weekly a list giving the numbers, titles, and claims of the patents issued during the week immediately preceding, together with the names and residences of the patentees. In the Commissioner's Report for 1870, he recommended that the scope of the publication be enlarged so as to constitute an official gazette of the Office. On January 3, 1872, the weekly list was first published under the name of The Official Gazette of the United States Patent Office. It then, however, embraced only the matters specified in the law of 1870; but in July, 1872, portions of the drawings were introduced to illustrate the claims in the patented cases. This enlargement was brought about in the following way. By a joint resolution of Congress, in January, 1871, the publication of the illustrated annual reports (commonly known as Patent Office Reports) was ordered to be discontinued and in lieu thereof the Commissioner was directed to have printed for free distribution one hundred and fifty copies of the complete specifications and drawings of each patent issued after July 1, 1869; but in May, 1872, Congress ordered this publication to be stopped, and at the same time made provision for illustrating the claims in the Official Gazette in the manner as above stated. The Official Gazette now has a circulation of about 7,000 copies, of which number 2,953 are subscribed for at five dollars per annum, and 3,576 are distributed free to public libraries, members of Congress, and public

officials. The expense of its publication is about $55,000 a year.

The law of 1870 enacted that the thing or art for which a patent was sought must, in order to be patentable, be a new and useful invention, not known or used by others in this country, and not patented or described in any printed publication in this or any foreign country before the applicant's invention thereof, and not in public use or on sale for more than two years prior to the application, and not proved to have been abandoned. It also added a provision that upon the failure of an applicant to prosecute his application within two years after any action therein, the application would be regarded as abandoned, unless it was shown to the satisfaction of the Commissioner that the failure to prosecute was unavoidable. Previous to this provision, after an action on the application by the Office, it might lie until it suited the applicant's leisure or interest to amend or request a re-examination. In some instances applications were not called up for ten and twelve years.

A model was not to be furnished unless the Commissioner required it. This change was made principally because there was not sufficient room in the model halls to classify and arrange the models, and because of the further fact that there was a preponderating opinion that they were unnecessary. There are now some 154,000 models in the model halls, and they are being added to at the rate of about 550 a year.

Provision was also made for the protection of Trade-Marks by allowing them to be registered in the Office.

By an act, August 1, 1874, the Commissioner was also charged with the supervision of the entry or registry of Labels.

In February, 1872, Mr. Leggett, who was Commissioner at that time, in a communication to the Secretary of the Interior, invited his "attention to the propriety of severing the Office from the Interior Department and its establishment as a department by itself." The Secretary transmitted the communication to the President, with the statement that the matter was "worthy of consideration." On March 13, 1872, the President sent the letters of the Secretary and of the Commissioner to Congress, with the message that he recommended "the careful consideration of Congress to the subject." The message was read, referred to the Committee on Patents, and ordered to be printed. It appears that nothing further was done in the matter until some five years later, when a bill was introduced in Congress providing for the organization of the Patent Office into an independent department and for giving it exclusive control of the building in which it was, and in 1884 the same bill was introduced in the Senate. Nothing came of the measure.

Hundreds and hundreds of incidents could be given of other and different measures proposed to Congress relating to the Patent Office and the patent system, and this one is only singled out because the historian of an hundred years hence will write of this as being the first attempt in which it was sought to establish the Department of Sciences and Arts. The patent fund will then have erected in the capital city a vast and magnificent tem-

ple in which will be permanently displayed the treasure stores of the Sciences and Arts. The imagination of the reader can divine what the scope of such a department will be.

In December, 1873, the law of 1870 was repealed and re-enacted in the Revised Statutes of the United States.

On September 24, 1877, the roof and model rooms and contents in the west and north wings were destroyed by fire, and much damage done to the building. About 87,000 models and 600,000 photo-lithographic copies of drawings were ruined by fire and water.

By an act approved February 18, 1888, one of the Assistant Secretaries of the Interior, to be designated by the Secretary of the Interior, is authorized to sign patents.

In 1871 there were 19,472 applications for patents, and 13,033 patents were issued. The receipts of the office were $678,716.46 and expenditures on account of salaries $422,316.02; contingent expenses were $14,082.32, and there was a balance in the Treasury to the credit of the patent fund of $759,180.03.

In 1890 the number of applications was 41,048, and the number of patents issued 26,208, an increase in nineteen years of 21,576 applications, and 13,175 patents. The receipts of the Office were $1,340,372.66, and the expenditures on account of salaries $657,505.15, and contingent expenses $158,867.83. Balance in the Treasury, January 1, 1891, $3,872,745.24.

From January 1, 1871, to January 1, 1891, there were 333,370 patents issued, or an annual average of 16,668. For the period beginning with January 1, 1868 (the

date is just prior to the abolition of the patent fund), and ending January 1, 1891, the Office paid into the Treasury, over and above all expenses, $3,301,600.76, or an annual average of $156,143.52; more than enough to pay the aggregated salaries of the President and the Justices of the Supreme Court for every year during the period.

LIST OF COMMISSIONERS.

M. D. Leggett, January 16, 1871.
John M. Thatcher, November 4, 1874.
R. H. Duell, October 1, 1875.
Ellis Speer, January 30, 1877.
H. E. Paine, November 1, 1878.
E. M. Marble, May 7, 1880.
Benjamin Butterworth, November 1, 1883.
M. V. Montgomery, March 23, 1885.
B. J. Hall, April 12, 1887.
C. E. Mitchell, April 1, 1889.

COMMISSIONER MITCHELL.